

ACCOUNTABILITY FOR OPEC: H.R. 5904,
THE “NO OIL PRODUCING AND EXPORTING
CARTELS ACT”

HEARING
BEFORE THE
SUBCOMMITTEE ON
REGULATORY REFORM,
COMMERCIAL AND ANTITRUST LAW
OF THE
COMMITTEE ON THE JUDICIARY
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CONTENTS

MAY 18, 2018

OPENING STATEMENTS

	Page
The Honorable Bob Goodlatte, Virginia, Chairman, Committee on the Judiciary	4
The Honorable Jerrold Nadler, New York, Ranking Member, Committee on the Judiciary	6
The Honorable Tom Marino, Pennsylvania, Chairman, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Committee on the Judiciary	8
The Honorable David Cicilline, Rhode Island, Ranking Member, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Committee on the Judiciary	3

WITNESSES

Mr. Seth Bloom, President and Founder, Bloom Strategic Counsel, PLLC Oral Statement	10
Dr. Ariel Cohen, PhD, Nonresident Senior Fellow, Atlantic Council's Global Energy Center Oral Statement	13
Mr. Phillip Brown, Specialist in Energy Policy, Congressional Research Service Oral Statement	14
Dr. Mark Cooper, PhD, Senior Fellow, Consumer Federation of America Oral Statement	16

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Statement submitted by the Honorable Jerrold Nadler, New York, Ranking Member, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Committee on the Judiciary. This material is available at the Committee and can be accessed on the Committee Repository at:

<https://docs.house.gov/meetings/JU/JU05/20180518/108326/HHRG-115-JU05-20180518-SD002.pdf>

**ACCOUNTABILITY FOR OPEC: H.R. 5904, THE
“NO OIL PRODUCING AND EXPORTING CAR-
TELS ACT”**

FRIDAY, MAY 18, 2018

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND
ANTITRUST LAW

COMMITTEE ON THE JUDICIARY

Washington, DC.

The Subcommittee met, pursuant to call, at 9:36 a.m., in Room 2141, Rayburn House Office Building, Hon. Karen Handel presiding.

Present: Representatives Marino, Goodlatte, Ratcliffe, Collins, Handel, Cicilline, Nadler, and Demings.

Staff Present: Dan Huff, Counsel; Andrea Woodard, Clerk; James Park, Minority Chief Counsel, Subcommittee on the Constitution; Slade Bond, Minority Chief Counsel, Subcommittee on Regulatory Reform, Commercial and Antitrust Law; David Greengrass, Minority Senior Counsel; and Veronica Eligan, Minority Professional Staff Member.

Ms. HANDEL. The Subcommittee on Regulatory Reform, Commercial and Antitrust Law will come to order.

Without objection, the Chair is authorized to declare a recess of this Committee at any time.

We welcome everyone to today’s hearing on “Accountability for OPEC: the No Oil Producing and Exporting Cartels Act.”

And I now recognize myself for an opening statement.

Welcome to this hearing on the No Oil Producing and Exporting Cartels Act, or NOPEC.

NOPEC is a longstanding, bipartisan, bicameral bill that would expose the Organization of the Petroleum Exporting Countries, OPEC, to U.S. antitrust law for its cartel behavior by removing the state immunity shield available to it under judicial precedent.

In previous Congresses, NOPEC has passed both the House and the Senate by overwhelming majorities. The bill has yet to be enacted into law, however, and the need for the enactment remains.

The average U.S. household spends over \$2,000 a year just on gasoline. That would be one thing if fuel prices were set by the free market, but they are not. Sixty percent of the total petroleum traded internationally is controlled by OPEC.

OPEC was founded in 1960. It has 14 member countries, including Iran and Libya.

According to the U.S. Energy Information Administration, production by the Organization of the Petroleum Exporting Countries is an important factor that affects oil prices. This organization seeks to actively manage oil production in its member countries by setting production targets.

Historically, crude oil prices have seen increases in times when OPEC production targets are reduced. This collusion translates directly to consumers' wallets since oil prices are by far the most important factor in determining gas prices at the pump. From 2008 to 2017, crude oil costs accounted for 61 percent of average retail price of gasoline.

In April 2018, OPEC and non-OPEC producers, led by Russia, agreed to continue an agreement they struck in 2016 limiting production. At the time, oil was at \$43 a barrel. It's now \$80 a barrel.

In reporting on the agreement, The Wall Street Journal stated, "Rising oil prices can quickly translate into higher pump prices, acting like a tax on American consumers, who often cut back in other spending areas."

In fact, Morgan Stanley estimates that if gas prices are \$2.96 this year, it would take an annualized \$38 billion from spending elsewhere. That would wipe out about a third of the additional take-home pay coming from the tax cuts this year.

Given all of this, the American people would be right to wonder why OPEC has not been held accountable for its anticompetitive behavior in the oil markets. The fact is that over the years consumers have tried to hold it accountable but have failed because of essentially judge-made barriers. The No Oil Producing and Exporting Cartels Act removes these barriers.

Although existing antitrust law already appears to prohibit foreign state actors from cooperating to limit oil production, NOPEC makes it explicit in the Sherman Act to remove any doubt. It also removes the immunity shields currently available under judicial precedent.

Specifically, NOPEC makes clear that anticompetitive activities relating to oil production fall within the commercial exception to the Foreign Sovereign Immunities Act. The bill also provides that courts may not decline to hear an antitrust case relating to oil production under the act-of-state doctrine.

Finally, NOPEC authorizes the Department of Justice, but not private entities, to bring suit against oil cartel members in Federal court. This last provision is important because it ensures that courts would only be hearing cases that the executive branch affirmatively elected to bring after considering the foreign policy and national security implications.

This is a bill that has always had strong bipartisan support, and my colleague Representative Chabot is again leading on this issue. We have a number of members for whom this topic may be new, so we have assembled an excellent panel to discuss the particulars.

With the summer driving season just about upon us, I hope we can act swiftly, in a bipartisan way, to pass this important legislation that protects American consumers.

With that, the Chair recognizes the Ranking Member of the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Mr. Cicilline of Rhode Island, for his opening statement.

Mr. Cicilline.

Mr. CICILLINE. Thank you very much, Madam Chair, for holding today's hearing.

The Judiciary Committee has a longstanding, bipartisan tradition of investigating and addressing anticompetitive conduct that harms working American families, including collusive behavior that artificially raises fuel prices.

Most recently, I joined the Chairman on a bipartisan letter in 2017 requesting that the Federal Trade Commission investigate reports of price gouging of fuel, food, water, and other essential resources by disaster profiteers in the wake of Hurricane Harvey and Hurricane Irma.

In the 110th Congress, the Judiciary Committee's Antitrust Task Force held two hearings on retail gas prices. At these hearings, witnesses testified that rising fuel prices were due to market manipulation, refinery capacity, crude oil supply, corporate oil mergers, and other factors.

Prior bipartisan activity also includes the consideration and passage of the No Oil Producing and Exporting Cartels Act, legislation that has not yet been introduced in this Congress but that we will consider today.

This bill, which passed the House and Senate with overwhelming bipartisan support in prior Congresses, would allow the Justice Department to investigate and prosecute anticompetitive conduct related to the production and price of oil by members of the Organization of the Petroleum Exporting Countries, OPEC, and other foreign countries.

It would do so by clarifying that anticompetitive conduct by foreign nations to limit the production or set the price of oil and other petroleum products is not exempt under the Foreign Sovereign Immunities Act or relevant judicial doctrines.

Since 1960, the OPEC oil cartel has colluded to control the supply of oil in an effort to manipulate crude oil supply. Most recently, 11 OPEC members announced a new agreement with 11 non-OPEC countries, including Russia, to manipulate oil prices by reducing oil production. The Supreme Court has referred to this type of anticompetitive conduct, which would ordinarily violate our antitrust laws, as the supreme evil of antitrust.

But unlike other cartel behavior, OPEC members and their corporate subsidiaries are free to engage in anticompetitive conduct due to judicial doctrines that limit the resolution of legal disputes against foreign countries.

While I support the goals of the NOPEC Act, mainly giving the Justice Department the tools to investigate and prosecute anticompetitive conduct by foreign oil-producing nations, use of antitrust enforcement in this area must be part of a broader thoughtful strategy toward ensuring energy independence and providing for diplomatic engagement with OPEC members and other countries that collude to withhold oil supply.

It is also important to note that antitrust enforcement alone is not a silver bullet to lowering oil prices. I firmly believe that ad-

reducing oil consumption, rather than oil production, is critical to ensuring America's energy independence. And that is why we must make it a national priority to deploy and expand our capacity for clean energy production, which would create tremendous economic opportunity for American families across the country.

In my home State of Rhode Island, we are already hard at work to deliver clean energy solutions and address climate change.

I am also concerned that antitrust enforcement against foreign nations has the potential to create serious geopolitical risks, such as oil embargoes and other forms of retaliatory conduct, while potentially lending itself to political interference in antitrust enforcement. I am very interested to hear from our witnesses whether this legislation could create any of these unintended consequences. We should be sure to take all of these possible concerns into account as we consider this measure.

I would also note that authorizing the Justice Department—or giving the Justice Department the power to enforce the antitrust laws against foreign oil cartels is not the same as compelling law enforcement in this area or pre-ordaining enforcement strategies at the Justice Department. Merely authorizing the Justice Department to investigate and prosecute these types of cases may be enough to discourage collusion by foreign oil cartels. Put another way, this legislation may give the executive branch a tool to speak softly and carry a big stick.

In closing, I want to thank the Chair again for holding today's hearing. I also thank our panel of witnesses for participating today and look forward to hearing your testimony.

With that, I yield back.

Ms. HANDEL. Thank you.

The Chair now recognizes the Chairman of the full Judiciary Committee, Mr. Goodlatte of Virginia, for his opening statement.

Chairman GOODLATTE. Thank you, Madam Chairman.

The "No Oil Producing and Exporting Cartels Act", or "NOPEC", is a bipartisan bill whose enactment is long overdue.

The fact that the Organization of the Petroleum Exporting Countries is not being held accountable for its anticompetitive behavior makes a mockery of U.S. antitrust law. Consider that the Justice Department is currently blocking a high-profile merger over consumers potentially paying 50 cents more a month.

Academics call for greater regulation to protect consumer welfare based on increasingly exotic antitrust theories. Meanwhile, nothing is done about OPEC's collusive activity, even though it appears illegal per se and is behind a rise in gas prices of over 50 cents a gallon since 2016.

The lack of action is not a function of gaps in the underlying antitrust statutes. As the Supreme Court has explained, under the Sherman Act, a combination formed for the purpose of and with the effect of stabilizing the price of a commodity in interstate or foreign commerce is illegal per se.

OPEC's organizational document, under the heading "Objectives," states that the organization "shall devise ways and means of ensuring the stabilization of prices in international oil markets."

Federal law specifically provides that the Sherman Act applies to foreign conduct that has a direct, substantial, and reasonably fore-

seeable effect on U.S. domestic commerce. That is certainly true of oil prices. A recent Wall Street Journal article warned that rising prices are posing a threat to U.S. growth as the cost of fuel and gasoline weighs on drivers, airlines, delivery companies, and other big consumers.

Unfortunately, courts have blocked efforts to hold OPEC accountable under these provisions.

In 1979, a Federal district court dismissed, on the ground of sovereign immunity, a lawsuit against OPEC brought by a labor union. But the same Federal law that creates that immunity contains an exception for commercial activity. Nevertheless, the judge read that exception narrowly to avoid having to decide the case.

On appeal, the Ninth Circuit did not reach the sovereign immunity question. Instead, it held that the suit was barred by the act-of-state doctrine, which is a judge-made doctrine designed to avoid judicial action in sensitive areas.

These concerns were echoed in subsequent cases. In 2010, the Obama administration urged the Fifth Circuit to dismiss a case against OPEC brought by private parties on act-of-state and political question grounds because it is for the executive branch, not the courts, to determine how best to protect United States foreign policy and national security interests in regard to foreign oil-producing states.

The NOPEC legislation under consideration fully addresses these concerns because it does not create a private right of action. It entrusts discretion on whether to bring a case solely to the executive branch. Courts would only be hearing cases that the executive branch affirmatively elected to bring after considering the foreign policy and national security implications.

No wonder that NOPEC has enjoyed robust bipartisan support since it was first introduced in the 106th Congress. For example, the bill that is the subject of this hearing is identical to the version offered in both chambers in the 110th Congress.

The House version was cosponsored by Representatives Conyers, Chabot, Lofgren, and Cohen, among others. The bill passed the House on suspension. Then-Speaker Pelosi lauded it as a critical tool, declaring that “American consumers must not be at the mercy of foreign oil cartels that conspire to fix prices and allocate production.”

The Senate version of the bill during the 110th Congress had 14 cosponsors, including Senators Grassley, Schumer, and Durbin. The Senate Judiciary Committee reported it favorably by unanimous consent.

Despite strong support in Congress over a period of years, NOPEC has not yet become law. However, recently, President Trump signaled that he may be more receptive than prior Presidents to NOPEC. This creates a real opportunity to enact this long-overdue law.

I look forward to hearing from our witnesses and to moving the bill forward.

Thank you, Madam Chairman.

Ms. HANDEL. Thank you.

The Chair now recognizes the Ranking Member of the full Judiciary Committee, Mr. Nadler of New York, for his opening statement.

Mr. NADLER. Thank you, Madam Chairman.

Madam Chairman, in 2007, I voted for legislation virtually identical to the measure that is the subject of today's hearing, the No Oil Producing and Exporting Cartels Act, or NOPEC Act, which passed the House with overwhelming bipartisan support. Although 11 years have passed since then, many of the reasons for supporting that legislation in 2007 remain valid today.

This legislation authorizes the Department of Justice to bring suit for anticompetitive behavior against members of the Organization of the Petroleum Exporting Countries, or OPEC, a group of 14 petroleum-producing countries whose self-described mission is, "to coordinate and unify the petroleum policies of member countries and ensure the stabilization of oil prices and a fair return on capital to those investing in the petroleum industry."

Put more bluntly, OPEC is a cartel whose members deliberately collude to limit crude oil production as a means of fixing prices, unfairly driving up the price of crude oil to satisfy the greed of oil producers.

Such behavior, if done by private companies, would be illegal *per se* under U.S. antitrust law. Because of a series of court decisions, however, U.S. antitrust enforcers are unable to protect American consumers and businesses from the direct harm caused by OPEC's blatantly anticompetitive conduct.

Some courts have held that OPEC member countries are entitled to sovereign immunity in U.S. courts because activities surrounding the extraction of petroleum constituted a sovereign act rather than a commercial activity. Other courts ruled that the act-of-state doctrine, a judicially created prudential doctrine by which courts avoid review of foreign governments' actions and defer resolution of certain disputes with foreign governments to the political branches, prevented consideration of the case.

The NOPEC Act directly addresses these decisions by amending procedural law and expressly authorizing the Justice Department to pursue antitrust litigation against OPEC members should it choose to do so.

First, it amends the Sherman Antitrust Act to add a new section, 7(a), that explicitly makes it illegal for any foreign state to act collectively with others to limit production, fix prices, or otherwise restrain trade with respect to oil, natural gas, or other petroleum products. This provision could be enforced only by the Justice Department.

The bill also creates an exemption under the Foreign Sovereign Immunities Act to allow litigation against foreign countries to the extent that they are engaged in price-fixing and other anticompetitive activities in violation of this new section 7(a).

Finally, this legislation clarifies that the act-of-state doctrine does not prevent courts from deciding antitrust cases brought against foreign governments under the new section 7(a).

OPEC controls more than 80 percent of global oil reserves, 40 percent of the world's oil production, and more than 60 percent of the petroleum that is traded internationally. When acting collectively, OPEC countries can greatly influence crude oil prices.

Why should the average American care about this? Because the price of crude oil is the largest single determinant of retail gas

prices. According to one estimate, crude oil prices accounted for 57 percent of the cost of retail gasoline as of February 2018.

And the enhanced price of oil is a direct tax on every American and on every American economic unit. The retail price of gasoline touches almost every aspect of Americans' daily lives, from the cost of commuting to the price of food, and almost every consumer good, to the extent such prices reflect transportation expenses.

High gas prices, in addition to raising these costs and cutting into Americans' income, can cause a vicious cycle of negative economic effects, such as causing consumers to cut back on purchases and limit their travel, which, in turn, hurts businesses and their employees.

The NOPEC Act strikes an appropriate balance between allowing aggressive enforcement of U.S. antitrust laws against OPEC to keep oil prices in check and respecting the separation of powers by deferring to the executive branch as to whether litigation is appropriate in any given case in light of foreign policy and national security concerns.

For a bill we last considered in 2007, one might be tempted to say that the concerns motivating the NOPEC Act are yesterday's news. In a somewhat literal sense, I agree. According to a CNBC report from 2 days ago, oil prices rose to \$80 a barrel for the first time since November 2014.

Last week, the U.S. Energy Information Administration estimated that U.S. regular gasoline retail prices over the period of April to September will rise to an average of \$2.90 per gallon, which is 17 cents per gallon higher than last month and up from an average of \$2.41 per gallon last summer.

That agency also reported that gasoline prices will reach a summer peak of \$2.97 per gallon by June and that this projected increase is primarily the result of higher forecasted crude oil prices.

For the foregoing reasons, I support reintroduction of the NOPEC Act. Nevertheless, I caution that it would be a mistake to think that enacting this legislation alone would fix the problem of unfair retail gas prices. Congress should explore the other factors that also drive high gas prices, including an anticompetitive level of concentration among oil refiners, our excessive petroleum consumption as a society, and the heightened risk of war and instability in the Middle East. Passing the NOPEC Act, however, would be a helpful step.

I thank our witnesses for their participation, and I look forward to their testimony.

And I want to add, I thank the Chairman of the Committee for actually holding a hearing on this bill. Even though we held a hearing on this back in 2007, I am glad we are holding another hearing now before we consider the bill in markup. So I thank you.

I yield back.

Ms. HANDEL. Thank you very much.

Without objection, the opening statements of the other Members will be made a part of the record.

Ms. HANDEL. I will now begin—

Mr. CHABOT. Madam Chair.

Ms. HANDEL. Yes.

Mr. CHABOT. Would it be possible for the gentlelady to recognize the gentleman from Pennsylvania?

Ms. HANDEL. Is there any objection?

Mr. CICILLINE. No, none.

Ms. HANDEL. All right. The Chair recognizes my colleague, Representative Marino from Pennsylvania.

Mr. MARINO. First of all, I want to thank Congresswoman Handel for presiding over this hearing.

And I yield my time to the author of this bill, Congressman Chabot.

Mr. CHABOT. I thank the gentleman for yielding.

I thank the gentlelady for holding this hearing this morning, and I will be brief.

And I want to thank the witnesses, who will be testifying when we ever stop talking. And I apologize for dragging it out even longer here.

This will be the fourth time that I have introduced this legislation since 2000, each time when OPEC's price controls caused gas prices to skyrocket.

And I would note, as the Chair of the full Committee mentioned, this has been bipartisan. I want to thank John Conyers for his support over the years, Zoe Lofgren, Steve Cohen, and others, my colleagues on both sides of the aisle, for supporting this.

Back in my home district, in Cincinnati, Ohio, and in Hamilton County and Warren County, the price of gas is nearing \$3 a gallon and continues to steadily rise. It's affecting people at all income levels.

I happen to also be the Chairman of the House Small Business Committee. It is dramatically impacting small businesses and their employees all over the country. And as the price of gas continues to go up, it is more expensive to ship their products around. Most of these small businesses have a very razor-thin bottom line, and it is affecting people all over the country.

There is really no excuse for what the oil cartels have gotten away with over the years. Sovereign immunity has basically protected them. This legislation, although it doesn't solve the whole problem, goes a long way in at least handling a significant part of the problem.

So I would encourage my colleagues on both sides of the aisle to support it. And I thank the gentleman from Pennsylvania, and I yield back.

Mr. MARINO. I yield back.

Mr. NADLER. Madam Chairperson.

Ms. HANDEL. Yes.

Mr. NADLER. I would like to ask unanimous consent to insert into the record the letter from Senator Kohl in support of the bill.

Ms. HANDEL. Without objection.

This material is available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180518/108326/HHRG-115-JU05-20180518-SD002.pdf>.

Mr. NADLER. Thank you.

Ms. HANDEL. I will now begin by swearing in our witnesses before introducing them.

If you would, please all rise. Raise your right hand.

Do you swear that the testimony you are about to give before this Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Great. Thank you so much.

Let the record reflect that all of the witnesses responded in the affirmative.

Thank you.

Our first witness, Seth Bloom, is the president of Bloom Strategic Counsel, a Washington, D.C., law firm specializing in antitrust law and competition policy.

Prior to founding his firm in 2013, Mr. Bloom spent nearly 14 years as a counsel on the staff of the Senate Antitrust Subcommittee, from 1999 until January 2013, the last 4 years of which as general counsel. He worked for Senator Herb Kohl, who was the first Ranking Member and then Chairman of the Subcommittee. He was the lead staffer on the NOPEC legislation and drafted the bill before it was introduced in 2000.

Mr. Bloom also served as a trial attorney in the Justice Department's Antitrust Division from 1996 to 1999. He holds a J.D. from the University of Pennsylvania Law School and a B.A. from the University of Rochester.

Thank you for being here.

I'm going to introduce everybody, and then we'll come back.

Our second witness, Ariel Cohen, is a senior fellow at the Atlantic Council. Dr. Cohen is also the founder and director of the Center for Energy, Natural Resources, and Geopolitics and a senior fellow at the Institute for Analysis of Global Security. His particular expertise lies in political risk, national security, energy policy, and he is geographically focused on Russia, Eurasia, Central and Eastern Europe, and the Middle East.

He frequently advises both the executive branch and the private sector on oil, gas, coal, and nuclear energy in Eurasia, Eastern and Central Europe, and the Middle East. He has testified regularly before Congress and has appeared on Bloomberg, CNN, Fox, CBC, Al Jazeera, and many other TV channels.

Dr. Cohen was previously senior research fellow in international energy security with The Heritage Foundation. He earned his M.A. in law and diplomacy and a doctorate at the Fletcher School of Law and Diplomacy.

Dr. Cohen, thank you for joining us.

Phillip Brown is a specialist in energy policy at the Congressional Research Service, or CRS. In support of the U.S. Congress, Mr. Brown provides research and analysis in existing and proposed Federal energy policies.

Mr. Brown's current portfolio of work is focused on oil markets and U.S. crude oil exports, clean energy policies, renewable electric power, and financial mechanisms that may be used to incentivize renewable electricity project developments.

Mr. Brown also actively monitors world energy markets in order to provide congressional clients with a global perspective of the effectiveness of various energy policy mechanisms.

Prior to joining CRS, Mr. Brown held various marketing, business development, and executive positions at companies ranging in size from a new startup venture in Diversified Energy Corporation

to Fortune 500 companies such as Northrop Grumman and General Dynamics.

Thank you for being here.

Our fourth and last but not least witness, Dr. Mark Cooper, is the director of research at the Consumer Federation of America, where he has responsibility for energy, telecommunications, and economic policy analysis.

Dr. Cooper is a fellow at the Stanford Law School Center for Internet and Society, an associate fellow at the Columbia University Institute on Tele-Information, and a fellow at the Donald McGannon Communications Center of Fordham University.

He is the author of five books and has published numerous articles in trade and scholarly journals, including recent Law Review articles on telecommunications and digital society issues.

Dr. Cooper has provided expert testimony in over 250 cases for public interest clients, including attorneys general, people's counsel, and citizen interveners, before State and Federal agencies, courts, and legislators in almost four dozen jurisdictions in the United States and Canada.

He holds a Ph.D. from Yale University and is a former Yale University and Fulbright fellow.

Thank you all for being here.

Each of the witnesses' written statements will be entered into the record in its entirety. I ask that each witness summarize your testimony in 5 minutes or less. To help you stay within that time—we walked through this before—there is a timing light in front of each of you. The light will turn on for 5 minutes green and then move to yellow, indicating that you have about 1 minute to conclude your remarks. And when the light turns red, it indicates that it's time to wrap up.

We'll start with Mr. Bloom.

TESTIMONY OF SETH BLOOM, PRESIDENT AND FOUNDER, BLOOM STRATEGIC COUNSEL, PLLC; ARIEL COHEN, PH.D., NONRESIDENT SENIOR FELLOW, ATLANTIC COUNCIL'S GLOBAL ENERGY CENTER; PHILLIP BROWN, SPECIALIST IN ENERGY POLICY, CONGRESSIONAL RESEARCH SERVICE; AND MARK COOPER, PH.D., SENIOR FELLOW, CONSUMER FEDERATION OF AMERICA

TESTIMONY OF SETH BLOOM

Mr. BLOOM. Thank you.

Chairwoman Handel, Ranking Member Cicilline, and distinguished Members of the Subcommittee, thank you for inviting me to testify on this important topic today.

From 1999 to January 2013, I served as counsel on the Senate Judiciary Committee's Antitrust Subcommittee, the last 4 years as the Subcommittee's general counsel. I am now an attorney in private practice, specializing in antitrust law and competition policy. And I want to stress at the outset that none of my clients have any interest in the issues I will discuss today. My testimony today is entirely my own.

One of our most important legislative initiatives during the time I worked for the Senate Antitrust Subcommittee was a bill we

named the No Oil Producing and Exporting Cartels Act, or NOPEC.

NOPEC is a very short bill that I believe would have a very large effect if enacted. NOPEC would make illegal under U.S. antitrust law the activities of foreign nations who participate in oil cartels designed to limit the supply or raise the price of oil imported into the U.S.

It would amend the Sherman Act, our Nation's basic antitrust law, to simply and clearly state that it would be illegal for any foreign state or instrumentality or agent of any foreign state to take joint action to limit the production of or set or maintain the price of oil or any other petroleum product when such collective action has a direct, substantial, and reasonably foreseeable effect in the United States.

NOPEC was first introduced in June 2000 by Senator Kohl and nine bipartisan cosponsors and was passed unanimously out of the Senate Judiciary Committee that year. Senator Kohl would introduce the NOPEC legislation with a large list of bipartisan cosponsors in every remaining Congress in which he served, a total of six more times. And it passed out of the Senate Judiciary Committee in each Congress, except for one, with a unanimous vote each time.

Companion legislation was introduced here in the House by Representative Chabot and several bipartisan colleagues on several occasions.

In 2007, the NOPEC bill passed with overwhelming majorities on both the House and Senate floors, with 70 votes in the Senate and 345 votes in the House, but in different legislative vehicles. The two measures were never reconciled.

I was very encouraged to learn the Subcommittee was holding this hearing today and that several Members of the Subcommittee were considering reintroducing this legislation. The need for this NOPEC legislation is very much as real today as it was when Senator Kohl first introduced it in the year 2000. Indeed, Senator Kohl sent a letter to the Subcommittee 3 days ago strongly supporting the reintroduction of NOPEC.

The OPEC oil cartel, a selfish conspiracy of 14 oil-producing nations, today continues its decades-long effort to limit the supply and therefore inflate the worldwide price of oil.

In November 2016, OPEC announced that 11 member nations would cut supply by a collective 425 million barrels in 2017, a cut of about 4.6 percent for each nation. A month later, 11 non-OPEC-member nations, led by Russia, announced that they, too, had agreed to the production cutback agreement.

So the menace of the oil cartel is growing today, and these supply cuts have worked. The price of Brent crude oil rose about \$10 a barrel during 2017. Indeed, these supply cuts have worked so well in OPEC and other nations' views that in November 2017 these 22 nations agreed to extend the supply cuts throughout 2018. And oil prices continue to rise.

The FTC has estimated that 85 percent of the variability of the price of gasoline is caused by the change in the price of crude oil. So millions of American consumers feel the effect of the OPEC conspiracy every time they visit the gas pump.

Such blatantly anticompetitive conduct by the member nations of the oil cartel to fix the price of oil by limiting supply violates the most basic principles of free markets and fair competition and should not be tolerated.

As the Supreme Court stated in 2004, cartels are, “the supreme evil of antitrust.” Because the law of supply and demand establishes that an agreement to limit output is tantamount to an agreement to fix price, courts have held as per se illegal agreements to limit supply, limit production, or set quotas, just as agreements to fix price.

As Senator Kohl stated in the Senate Judiciary Committee’s hearing on the NOPEC bill in 2007, “If the members of OPEC were private companies and not nations, they long ago would have been prosecuted for engaging in illegal price fixing.”

But the OPEC member nations and their allies hide behind the doctrines of sovereign immunity and act of state to claim immunity from antitrust prosecution for their illegal price-fixing cartel. So the solution is simple: legislatively eliminate these protections for members of the oil cartel.

The sovereign immunity statute already contains an exception for commercial activity of nations. And what could be more commercial than the sale of oil for profit?

Despite this, a mistaken 1979 decision of a Federal district court in California, in the International Association of Machinists case, ruled that OPEC and its member nations were immune from antitrust scrutiny. Congress should overturn this precedent by passing legislation that makes clear that nations that engage in oil cartels will not gain the benefits of sovereign immunity.

Likewise, the legislation should make clear that the act-of-state doctrine cannot protect from antitrust liability nations that participate in oil cartels.

When I was counsel to the Senate Antitrust Subcommittee, I was frequently asked what difference the enactment of NOPEC would make. In my judgment, enactment of such a statute can make a real difference in restraining the anticompetitive actions of the oil cartel.

First, many OPEC member nations and their new allies have extensive assets and bank holdings in the United States. Should the Justice Department file suit under NOPEC and win, the U.S. could seize those assets.

Second, the mere threat of bringing lawsuits under NOPEC will give the U.S. an important tool to employ in negotiations with the oil cartel. This threat will likely restrain the oil cartel as it considers production cutbacks.

Enactment of the NOPEC legislation would, for the first time, enable our Justice Department to take strong legal action to combat the illegal price-fixing activities of the oil cartel.

I commend the Subcommittee for holding this hearing today and for considering this important piece of legislation. Thank you.

Mr. Bloom’s written statement is available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180518/108326/HHRG-115-JU05-Wstate-BloomS-20180518.pdf>.

Ms. HANDEL. Thank you.

Dr. Cohen, you are now recognized.

TESTIMONY OF ARIEL COHEN, PH.D.

Mr. COHEN. Chairman Handel, Ranking Member Cicilline, and honorable Members of the Subcommittee, thank you for inviting me today. I raised my voice in support of this legislation back in 2007, and I am doing it again.

My name is Ariel Cohen. I'm a senior fellow at the Atlantic Council, nonresident. The views expressed here are mine alone, and I am grateful for the opportunity.

The monopolization of state resources by powerful entities is a phenomenon as old as trade itself. From China's infamous Salt Commission in 758 A.D. to Standard Oil and U.S. Steel in the turn of the 20th century, history is replete with cautionary tales of distorted commodities markets and their deleterious effects on populations and on commerce. More than mere market failures, however, the concentrated control of basic necessities is a threat to our own way of life.

Oil today, much like salt in ancient China or steel in 1900, is a strategic resource with no large-scale substitute yet, until electric propulsion and fuel choice replaces the current dependence on jet fuel, gasoline, and diesel fuel. Given that oil is the lifeblood of the international trade system, the United States and global community at large can no longer afford to leave this critical market vulnerable to manipulation.

The problem today that we are facing is that OPEC is expanding. The Vienna Group is adding numerous countries. I have a list here: Kazakhstan, Azerbaijan, Oman, Mexico, Sudan, South Sudan, Malaysia, et cetera—very few of them democracies, such as OPEC itself. There are very few countries in OPEC which are democracies, and a number of countries that are strongly anti-American: Russia, Iran, Iraq, Venezuela, and Ecuador.

In the second half of 2014, oil prices crashed, the combined result of weak global economic growth and an influx of supply from U.S. shale. The world looked to OPEC to correct massive downturn, which saw prices slide from over \$110 per barrel in June of 2014 to \$50 by January 2015, in 6 months.

Rather than pulling back supply to stabilize prices, OPEC opted to maintain production levels in an effort to snuff out North America's fledgling shale industry. The results were disastrous. Prices fell to below \$30 a barrel by January 2016. Investment in the energy sector collapsed, spilling over into other commodities and roiling the global banking sector.

While low oil prices are in many ways beneficial to the U.S. economy, the rapidity of a price drop, amplified by OPEC and its allies in an effort to protect market share against American competition, deepened the global recession.

Today, we are subjected to a more familiar, possibly more dangerous form of OPEC market manipulation: coordinated supply cuts. This kind of weaponization of the flow of supply was carried out in the 1973 Arab oil embargo after the Yom Kippur War and in 1979 in the second oil crisis connected to the Iran-Iraq War. OPEC did not step in, did not correct the price, and, as a result, a global economic recession from 1974 till 1980s ensued.

So, right now, OPEC cuts eliminated 1.8 million barrels per day from circulation—2 percent of global supply. And the OPEC member and non-member-state alliance, the Vienna Group, has a compliance of 163 percent with the targeted cuts. So they are doing their best, above and beyond the planned cuts, to drive the prices up.

Some concerns were raised, what will happen if the Trump administration abandons JCPOA, and what will happen if the Iranian supply will decrease. And the answer is, among the experts, the meetings I attend, we are talking about 250,000 to 500,000 shortage—500,000-barrels-a-day shortage. That amount would be easily filled by U.S. shale, by Saudi Arabia that has an interest in sanctions on Iran, and most probably by Russia and other countries of the former Soviet Union that are minimally complying with these sanctions.

As a former Chairman of the Fed Janet Yellen described in 2011, “Higher prices lower American income overall because the United States is a major oil consumer. The increasing price of crude acts as a tax on the U.S. household and tends to have a dampening effect on consumer spending.”

To conclude, the United States can no longer allow OPEC and its allies to operate with immunity from sensible antitrust legislation. The consequence of one group controlling 40 percent of world oil production and, with their allies, 55 percent and 80 percent of proven reserves are too menacing to ignore.

Ms. HANDEL. If we can wrap up, Dr. Cohen.

Mr. COHEN. The geopolitical outcome hurts U.S. interests and our allies. Hydrocarbon revenues are the primary source income for some of America’s chief global adversaries. I—

Ms. HANDEL. Thank you.

Mr. COHEN [continuing]. Mentioned Russia and—

Ms. HANDEL. Thank you very much. Thank you.

Mr. Cohen’s written statement is available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180518/108326/HHRG-115-JU05-Wstate-CohenA-20180518.pdf>.

Ms. HANDEL. Mr. Brown, you are now recognized.

TESTIMONY OF PHILLIP BROWN

Mr. BROWN. Chairwoman Handel, Ranking Member Cicilline, Members of the Committee, good morning. My name is Phillip Brown. I am a specialist in energy policy at the Congressional Research Service.

CRS appreciates the opportunity to testify about the No Oil Producing and Exporting Cartels Act. And the focus of my testimony today is about recent oil market interventions by the Organization of the Petroleum Exporting Countries, or OPEC.

Issues related to international law are beyond the scope of my testimony. Additionally, in accordance with our enabling statutes, CRS takes no position on this or other legislation.

Benchmark oil prices are a function of fundamental factors such as demand, supply, and inventories. However, prices can also be affected by geopolitical risks, unplanned outages, and spare production capacity in the market.

Today, OPEC influences the oil market through its role as a supply manager. Ordinarily, the organization holds two meetings a year to discuss oil market conditions and make decisions about member country production levels. Historically, Saudi Arabia has played the primary swing producer role. Decisions that affect oil production can have a direct impact on oil and petroleum product prices.

In 2014, following 3 years of relatively stable prices in the range of \$100 to \$125 per barrel, supply and demand balances indicated that the market was becoming oversupplied. Much of the oversupply at that time was due to rapid growth in U.S. oil production. By the November 2014 OPEC meeting prices had fallen below \$80 per barrel. There was some expectation that OPEC would reduce production in order to address the oversupply situation. However, OPEC decided to maintain its production levels, and prices declined rapidly. OPEC meetings in 2015 had similar outcomes, and prices fell to as low as \$26.

OPEC's nonintervention was perceived by some as a targeted effort to disadvantage U.S. oil producers. From 2015 to July 2016, U.S. oil production declined by a million barrels per day.

Subsequently, H.R. 4559 was introduced in the 114th Congress. This bill sought to create a commission to investigate OPEC practices deemed to be anticompetitive, including those that disadvantaged U.S. oil producers. An identical bill, H.R. 545, has been introduced in the 115th Congress.

Oil prices started to recover in 2016, and OPEC began laying the foundation for a market intervention that would address global oversupply and record-level inventories.

In November 2016, OPEC announced that 11 of the 13 then-active member countries—Libya and Nigeria were exempt; and, also under the agreement, Iran was actually allowed an increase in production—had reached an agreement to reduce production by approximately 1.2 million barrels per day.

In December 2016, OPEC announced that 11 non-OPEC countries, led by Russia, had agreed to join the agreement, and these countries collectively committed to reduce oil production by an additional 560,000 barrels per day. This 22-country agreement went into effect in January of 2017 and is currently scheduled to expire at the end of December 2018.

Compliance at the group level has exceeded the commitment, and the group has collectively reduced crude oil production by approximately 1.9 million barrels per day since the agreement took effect. As a result, crude oil and product storage levels have declined, and the International Energy Agency reports that inventories have returned to the 5-year average.

Benchmark crude oil prices have subsequently increased and are up nearly \$25 per barrel since the agreement went into effect. And the spot price of Brent crude oil reached \$80 yesterday. However, demand growth and geopolitical risk have also contributed to the price escalation.

First introduced in 2000, a version of the NOPEC bill was introduced during each Congress from the 106th to the 112th. The House passed one such bill in 2007. These bills would have modified the Sherman Act, making it illegal for any foreign state to en-

gage in collective activity to limit oil production and trade and therefore influence prices.

Research suggests that the existence of a supply manager in the oil market can support stable prices. The relatively long investment and development cycle for the majority of global oil production assets and the need for such stable price signals have been central justifications for the existence of a global oil supply manager.

Without a supply manager, it has been suggested that the oil market may enter a period of extreme price volatility. Others, however, suggest that the functioning of an oil futures market, along with the growth of price-responsive U.S. tight oil, could provide a degree of price stability without the existence of a supply manager.

Thank you for the opportunity to testify today. I look forward to answering any questions from Members of the Committee.

Mr. Brown's written statement is available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180518/108326/HHRG-115-JU05-Wstate-BrownP-0180518.pdf>.

Ms. HANDEL. So far, Mr. Brown, you are witness number one in following the rules. Thank you.

Dr. Cooper, you are recognized.

TESTIMONY OF MARK COOPER, PH.D.

Mr. COOPER. Madam Chairwoman, Members of the Committee, my remarks today do represent the opinion of the Consumer Federation of America.

In his State of the Union address in 2006, George Bush, a Republican oilman, declared that America is addicted to oil. Prices were extremely high, and policymakers focused a great deal of attention on how to respond.

One idea that always comes up at moments like this is NOPEC, a law that would enable the Department of Justice to sue the members of the oil cartel, break their ability to administer prices, and stop the drain of hundreds of billions of dollars of monopoly rents out of our economy.

If the members of OPEC were companies, our antitrust laws would have put a stop to this illegal administration of prices half a century ago. But they are not companies; they are sovereign nations. And that complicates things.

More importantly, in the long term, the tendency for consumption to increase with population and economic growth interacts with the extremely concentrated nature of low-cost resources in the world so that, over time, the same oil-producing nations would find it in their interest and ability—classic antitrust terms—to drive the price up without administering it. It's called conscious parallelism, and it's really hard to prove in the courts.

The right answer was obvious to Congress when they passed the Energy Independence and Security Act of 2007. Note the year. Where NOPEC almost got to the finish line, EISA did get to the finish line.

You do not fight an addiction by increasing the supply of the drug. You fight an addiction by kicking the habit. There is certainly some benefit to increasing our ability to supply our own needs in the short term, but that does not solve the problem. And

our ability to do so will remain limited until we reduce the consumption of oil in the U.S. and globally dramatically.

The single most important part of EISA was to reboot the fuel-economy standards, setting the goal of dramatically slashing oil consumption by reforming the approach, and also by making a firm commitment to achieve maximum technically feasible and economically practical reductions.

After 10 years of building an effective, comprehensive, cooperative Federal and State program, of course the current administration has decided not only to stop progress but to tear the structure apart.

Our analysis of the national program shows it has a positive benefit-cost ratio of six to one, at a break-even cost of 75 cents a gallon. Rolling the standards back would cost the average household about \$4,500, and the total of \$350 billion of savings that would be foregone would only save automakers \$50 billion. That's a negative benefit-cost ratio of minus six to one.

Therefore, in our opinion, the act violates not only the Administrative Procedure Act—but because they haven't built the record—but it violates the underlying energy statutes. I don't believe they could ever build the record to support their action because EPA, NHTSA, and the California Air Resources Board have, in fact, identified market failures and explained why performance standards work well.

Of utmost importance, this program is what I call command but not control. It is long-term, product-neutral, technology-neutral, responsive to industry needs, responsive to consumer needs, and pro-competitive. It tells them, yes, you have to meet a standard, but it lets the automakers do it the way they can best. And you know what? They are good capitalists. They will do it in the least-cost manner possible. This is a good command-but-not-control standard.

And we have seen it for 10 years. Efficiency is increasing. The cost of efficiency has been coming down. The automobile industry has been doing fine. And that is exactly what EISA intended.

So NOPEC would be fine, but if it detracts at all from the commitment to reducing consumption, in the long term it could do more harm than good.

By scrapping the standards and preventing the clean car States from sticking to them, the current administration has decided to feed the oil habit rather than to kick it. This will increase U.S. consumption by trillions of gallons over the next couple of decades, pointing the world in the wrong direction. Now, automakers and oil companies will profit, but consumers, the economy, national security, and the environment will suffer.

Thank you.

Mr. Cooper's written statement is available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180518/108326/HHRG-115-JU05-Wstate-CooperM-20180518.pdf>.

Ms. HANDEL. Thank you very much to all of our witnesses.

We're now going to enter into the portion of our hearing where the Members of the Subcommittee have an opportunity to ask questions.

I'm going to hold on, myself. I'd like to first recognize Representative Marino from Pennsylvania, the Chair of this Subcommittee, for his 5 minutes.

You are now recognized.

Mr. MARINO. Thank you, Madam Chair.

Thank you for being here.

I'm going to get right to the point. After the big three raised their prices, all gas stations that I have seen—and I travel across this country—the prices go up all at once. And they blame it on issues in the Middle East, but that's unclear. But when those issues go away, the price never comes down.

The U.S. is self-sufficient in oil production and natural gas production, yet we export a great deal of oil. Saudi Arabia, we spend \$61 million per day on buying oil from them. Iraq, who owes us money for the war, we spend \$24 million per day paying them. Venezuela, who doesn't even like us, we end up paying them \$44 million per day.

Angola, Kuwait, Libya, UAE, Qatar, other countries that aren't crazy about us, we send them over \$93 billion a day. And the totals—excuse me—\$254.2 billion a day among those five countries. And over the year, with all these combined, it's about \$93 billion.

Why is that? We are self-sufficient in oil. Why are we exporting oil and buying oil from many countries that don't even like us?

Mr. Bloom and then Dr. Cohen, please.

Mr. BLOOM. Thank you for the question, Congressman.

Well, that gets at a question of energy policy, which is beyond my expertise as an antitrust lawyer. But I will say this. As long as we tolerate the OPEC oil cartel and now the 11 additional nations that have agreed to cooperate with it, that worldwide price of oil is going to increase. So the problem you identify is getting worse. The dollars we are going to be spending from those countries is going to be higher. And that is why I believe we really need to have the ability to take action against the oil cartel.

Mr. MARINO. What do you recommend?

Mr. BLOOM. Well, I recommend passage of this legislation. I recommend a true fair and free market for oil.

You know, whether or not we want to export our oil or not, that's a question of energy policy. And I know there's arguments on both sides of that question. But without having to resolve that today, one thing that I think we should all be able to agree on is that we shouldn't tolerate this anticompetitive conspiracy which artificially inflates the price of oil.

Mr. COHEN. Let me second that, in terms of my learned colleague's view that we need to pass NOPEC.

But to the point you raise, sir, the U.S. was based on free trade. All oil is not created equal. Different refineries are calibrated for different types of oil. So we may be generating oil, light sweet crude, that is exported to a refinery, let's say, in Europe, and we may be importing heavy oil that our refineries in the Gulf Coast are calibrated to process.

So the market in oil does not subvert our oil economy—

Mr. MARINO. We haven't built a refinery in how many decades?

Mr. COHEN. That is a regulatory policy issue that, as my colleague said, is not the subject of this hearing.

But what I will tell you is that we are consuming, if I remember correctly, 19 million barrels a day. We are consuming close to a quarter of global produced oil. The only country that consumes more oil than us is China. And we are not producing as much oil.

So when you're saying we're self-sufficient, we're self-sufficient maybe in hydrocarbons in general or in production of electricity in general, but we're not self-sufficient in production of crude, and that's why we're importing it.

Mr. MARINO. And it doesn't mean we cannot be self-sufficient. We can put a man on the moon and transplant a heart. We certainly can take care of this issue. Would you not agree?

Mr. COHEN. Can you repeat, please?

Mr. MARINO. You're saying we're not self-sufficient, but we could be self-sufficient if we built the infrastructure and we put the primary focus on not importing oil. We can put a man on the moon, and we can transplant a heart. I pretty much believe that we can do anything.

Mr. COHEN. Congressman, oil production is a complex combination of the price of production, of environmental regulations, and of supply and of demand.

Mr. MARINO. And that gets to another issue for another day on the deregulation that we have to do. I'm a conservationist, but the regulation is killing us.

And, unfortunately, my time's up. I yield back. Thank you.

Ms. HANDEL. Thank you.

Mr. COHEN. So let me just add—

Ms. HANDEL. One sentence.

Mr. COHEN [continuing]. To the question. Yes.

We do not build nuclear reactors. Our nuclear industry is in shambles. As the Congressman said, we're not building refineries. We should ask ourselves a question, how we can—

Ms. HANDEL. Thank you.

Mr. COHEN. Yes.

Ms. HANDEL. Got it.

I'd like to now recognize the Ranking Member of the Subcommittee, Representative Cicilline.

Mr. CICILLINE. Thank you, Madam Chair.

I think Mr. Marino is right. We can become energy-independent and have the kind of man-on-the-moon approach with a very significant investment in renewable energies and new technologies.

And I think, Dr. Cooper, that was your argument, that if we're really serious about energy independence, we still rely on imports of crude oil significantly, and America could lead the world in the development of new technologies, renewable energy, and become not only energy-independent but the leader in the world in producing that kind of energy. I think that was your point, Dr. Cooper.

Mr. COOPER. We can be self-sufficient if we all get into electric cars, because we don't generate electricity with oil. And we don't need nuclear reactors. We have immense resources in wind and solar. Separate question.

But the interesting thing here is that—the point made is that oil is a fungible commodity. There is a price set in the world. The problem is that the cartel prices against the residual demand. They

are a cartel, and Nobel Prize to John Nash about discovering why, how that happened.

So you're in a situation where, ultimately, you have to solve this problem on the demand side. That's all there is to it.

Mr. CICILLINE. Thank you.

Mr. Brown, your very last sentence of your testimony, you said some people believe that a supply manager is the way to ensure—I don't—you gave, sort of, two contrasting views. Do you remember what you said?

Mr. BROWN. Yes. There's been some recent research in the oil community that suggests that, historically, when a supply manager exists in the marketplace, there have been long periods of very stable prices. We saw this primarily with the Texas Railroad Commission between 1930 and 1970, 1935 to 1970, along with international oil companies that were controlling global, nondomestic supply.

The contrast of that is that things in the market have changed, and tight oil development in the United States is a very price-responsive, short-cycle developments resource of supply. And it's uncertain if that could be a moderating effect for the global market.

Mr. CICILLINE. And while I think that analysis found stability, it also, I think, would be fair to say inflated prices as a result of that management. In other words, you're trading off some stability for consumers paying more for the finished product.

Mr. BROWN. That's correct. There would be periods during the non-supply-managed eras that would have lower prices but then other periods that would have much higher prices. So there's a high degree of variability.

Mr. CICILLINE. Are there—and this is really for any of the panelists. Are there any issues that we should be concerned about, assuming we were to pass this legislation, in terms of what any of the OPEC countries might be in a position to do in terms of retaliation?

We struggled with this yesterday in my office, thinking, are there any markets or products that the U.S. produces and sells that they would have the ability to take some sort of retaliatory action?

Mr. Bloom, I don't know if you have some thoughts on that.

Mr. BLOOM. Thank you. Yeah, I mean, this is an argument that's often raised against NOPEC. I would make several points about it.

Number one, retaliation. I mean, many of these nations, small nations, like South Sudan, or you could name the nations on the list—I guess South Sudan's a nation that wasn't part of OPEC, but it's part of this recent cooperation agreement. I believe they need to sell oil to us. That's essential to their economy. That's the one export that they have. To think that they would cut off the United States, a major purchaser of oil, as Chairman Marino listed the amounts of money that we spend, I think, is not realistic.

Finally, I mean, there are other items of legislation that are similar to this. For example, there already is a commercial exemption to the Federal Sovereign Immunities Act, so commercial activity of states today are not exempt from sovereign immunity, and yet we don't see retaliation.

In addition, Congress has passed, in the last decade, laws against state sponsors of terrorism and allowing victims of ter-

rorism to go after a nation's assets in the United States. This hasn't led to a worldwide rise in retaliation. So I just don't accept that argument.

Mr. CICILLINE. Yes. Dr. Cohen and then Dr. Cooper.

Mr. COHEN. On this subject, we have countries that are geopolitically oriented against us regardless of what's happening in this particular matter.

In my view, under the current leadership, Saudi Arabia will remain an ally because Saudis perceive Iran as an existential threat. On the other hand, Venezuela, Russia, and Iran will continue to remain adversaries regardless of what the Congress is doing.

Mr. CICILLINE. Thank you.

Dr. Cooper.

Mr. COOPER. One-third of our economy is tied up in world trade. We don't realize that, and now we're slowly realizing it because we've decided to step back from free trade and do other things, and we've discovered it's really hard, because we're so dependent on trade.

And so the geopolitics will always get in your way. The key here is to get the market fundamentals right. And the only way to do that, I think, is to reduce OPEC's share of the world oil market by reducing our demand.

Mr. CICILLINE. Thank you very much.

Thank you, Madam Chair. I yield back.

Ms. HANDEL. Thank you.

I will now do my questioning.

You know, I actually agree that it's an appropriate goal to work towards self-sufficiency. That's obviously an appropriate goal. Yet we still have the issues that we have today, which means that we need to address and deal with the OPEC situation.

So I'd like to come to you, Mr. Bloom. How do you respond to the critics who argue that NOPEC sets a dangerous precedent in eliminating sovereign immunity?

Mr. BLOOM. I don't agree with that, as I just said in responding to Ranking Member Cicilline's question. There's no dangerous precedent. There's already a commercial exemption for sovereign immunity.

And sovereign immunity is statutory. For there to be other attempts to withdraw sovereign immunity, it would have to pass an act of Congress.

And so I don't—you know, this is a unique situation we have with the oil cartel. I don't see any dangerous precedent.

Ms. HANDEL. All right. Thank you.

Second question. This legislation has received strong, bipartisan support in the past. Can you think of any good reason to be less supportive this time around than previous?

Mr. Bloom and then Dr. Cohen.

Mr. BLOOM. No, I can't. You know, in fact, as I said in my statement, I think the menace of the oil cartel is growing. We now see 11 additional nations adjoining the 11 nations of OPEC that agreed to the supply cutbacks. You know, if we let this kind of action go unchallenged, it just grows in the world.

And so, in fact, I don't think there's any reason why it shouldn't be bipartisan. I've really been heartened in the past that it has

been bipartisan. But I think the need for this legislation has grown today.

Ms. HANDEL. Thank you.

I'll now yield the remainder of my time to my colleague, Representative Chabot from Ohio.

Mr. CHABOT. I thank the gentlelady very much for yielding. Thank you, Chairman.

And my first question would be—and I guess I'll go to Mr. Bloom and Mr. Cohen with this one, if I can. How much of an impact on the price of oil does the collusion between OPEC actually have? If we didn't have that collusion going on and OPEC didn't exist, how big a deal is it to the actual price of oil out there?

Mr. BLOOM. Well, Representative Chabot, I think we've had a real-world experiment over the last year and a half, ever since the additional production cutbacks were announced by OPEC in November of 2016 and then the 11 additional nations joined it in December of 2016. I've heard various statistics, but I guess the price of oil has about doubled from around \$40 a barrel to now around \$80 a barrel. I think that's a natural experiment of the impact of OPEC on oil prices.

Mr. CHABOT. I saw you nodding, Mr. Cohen, so I assume you agree.

Mr. COHEN. Not only I agree, we have additional data. For example, in 2016, the amount of oil revenue in Russia was \$8 billion. In 2017, it was close to \$32 billion. So it quadrupled, the Russian revenue quadrupled.

Also, in the 1970s, because the Saudis cut production and then did not step in in 1979 when the Iran-Iraq War took off large amounts of oil from the market, the prices quadrupled, the oil prices quadrupled again.

And these shocks, because they're so quick and sudden—sometimes the price doubles in 6 months—these are malignant blows to the American economy and to the economy of the West at large. We are talking about massive wealth transfer from the United States, Western Europe, Japan, and now China to countries that are not democratic.

And this goes to Chairman Handel's question of bipartisanship. I think, thank God, both Republicans and Democrats agree, concur, that we should not subsidize in tens of billions of dollars antidemocratic, suppressive, repressive regimes, from Venezuela to Iran and Russia.

So that the idea of a market manager that somebody mentioned, that idea is not supported by the available evidence. What kind of market—

Mr. CHABOT. Let me cut in. I'm almost out of time, and I wanted to get back to one thing.

Mr. Bloom, let me go back to you on this one. If we finally do pass this—and I know you worked with Senator Kohl trying to get this, and I've been working for years, and, again, bipartisan—could you quickly give the scenario of how this actually would play out? How would it actually make a difference? What procedure would occur?

Mr. BLOOM. Certainly.

Well, you know, first of all, an important thing to note, as the legislation we worked on, is that the only party that would have the ability to file an action under NOPEC would be the U.S. Justice Department. And that was deliberate because of the foreign policy concerns inherent in this. And the Justice Department, as it would with any antitrust issue, would launch an investigation.

And, actually, it wouldn't be very hard, because OPEC and its allies are so public and so proud of what they do they issue public statements. So this isn't like all these conspiracies we've seen in the past, like the lysine conspiracy and other conspiracies.

You don't have to do much of an investigation, but they'd find out what the acts were. And then they would have the ability to file a lawsuit to challenge OPEC member nations and seize their assets or seek injunctive relief preventing this kind of thing.

So the only thing I'd like to add to that is that—

Ms. HANDEL. If we could just wrap up.

Mr. BLOOM. Sure. I'll wrap—

Ms. HANDEL. I want to get to my colleague from Florida here.

Mr. BLOOM. Can I just wrap up with this one point? But the idea—

Ms. HANDEL. Well, no. That was a clue that we're wrapping up. It wasn't a question. Sorry.

Mr. BLOOM. Okay.

Ms. HANDEL. If I could now recognize my colleague from Florida, Representative Demings.

Mrs. DEMINGS. Thank you so much, Chairwoman and to our Ranking Member. And, Chairwoman, thank you for your commitment to the efficient use of time this morning.

But I am also interested in exactly how it would play out if the Department of Justice did file a lawsuit, so please continue what you were going to say.

Mr. BLOOM. Thank you very much, Madam Congresswoman.

So what I was going to say is I think the best way this would play out would actually be no antitrust lawsuit at all. It would be used by the executive branch, by the Justice Department, by the State Department, in negotiations with OPEC or their member nations, and say: Look, this is what we can do. We have the ability to do this, and we can go seize your assets here in the United States, but we'd rather not.

And I think the threat of that, or the arrow in the quiver of negotiations, would restrain and deter at least some members of the oil cartel from engaging in these practices. So that, in my ideal world, would be the way it would work.

Mrs. DEMINGS. Are you aware of any prior attempts on the Justice Department's behalf to take action?

Mr. BLOOM. Well, I am not because of the precedent of a 40-year-old decision in the Federal court in California, International Association of Machinists, which basically held that the OPEC member nations were exempt under sovereign immunity, despite the express exemption of the commercial activity exemption in the statute.

So I think that's deterred our Justice Department from pursuing this.

Mrs. DEMINGS. Okay. Thank you very much.

Mr. BLOOM. Thank you.

Mrs. DEMINGS. Dr. Cooper, in your written testimony, you note that the Trump administration has reversed fuel-efficiency standards that are critical to saving American consumers money while also reducing consumption of oil over time. We've all talked about the importance of self-sufficiency.

Can you, for my benefit and the record, describe the benefits of fuel-efficiency standards? And how significant are these estimated benefits? Do they substantially outweigh the cost of imposing fuel-efficiency standards?

Mr. COOPER. Well, the agencies that have been responsible over the 10 years since EISA was passed have taken the law seriously. They produce a long-run path of increasing fuel economy. And the automakers have done well; they've done extremely well under it. The cost of efficiency has plummeted because they're good capitalists. You tell them to do something, they figure out how to do it the least-cost way possible.

They're now all talking about going to electric vehicles, which really is the bullet aimed at the heart of the oil industry. You have to realize that the commitments around the world to going to electric vehicles means the end of the oil industry. And it's very hard to think about, because we know that the price of oil will plummet as everyone starts driving electric vehicles. And then the question is, how do you make sure you keep on that path?

So there is no doubt that this was a program remarkable for the cooperation between EPA and NHTSA, remarkable for the cooperation between Washington and California, that has really worked extremely well.

It's the right thing to do when Congress—as I said, they almost passed NOPEC, and they did pass EISA at a key moment. Ten years later, it works. It's working. And abandoning it is a huge mistake. It's illegal. It's flat-out illegal.

Mrs. DEMINGS. Could you elaborate a little bit on what impact it would have on those companies that have already begun to comply with the regulation?

Mr. COOPER. Well, the interesting thing is there's a massive industry that has been built up around fuel economy. That industry disappears if you freeze and roll back.

The automakers get some short-term gains, but then they've got a real problem. Our cars are out of step with the rest of the world. They can't sell cars anyplace else. And they've sort of suddenly discovered that. You cannot be a successful automaker today if you can't sell to the world. Thirty years ago you could, but today you can't. And they understand that. They manufacture cars overseas which comply with the overseas requirements. They just don't want to manufacture them here.

So they need help. We've seen that. They clearly—management is very short-term. They need to be long-term. The whole world is going to electric. A lot of American companies are talking about electric, but they need that extra push to make sure they stay the course.

So we have a plan that's working, that's right. NOPEC would be fine, but the problem is that the price of oil would go to \$40 a barrel, but then it would go back up slowly. Because if the world didn't

stop increasing its use of oil, you could not keep the price down, let's be honest. So you need all of these other nations to lower their consumption too.

Mrs. DEMINGS. Very quickly, Dr. Cohen.

Mr. COHEN. Unfortunately, Madam Congresswoman, the developed world, which is responsible for the production and purchase of the majority of new vehicles—India, China, et cetera—are not doing what Dr. Cooper is describing. China, to a great degree, yes. India, for example, or Africa are not. They're still buying gasoline engine cars. And oil consumption is growing in the world and projected to grow for about 25, 30 years.

Mrs. DEMINGS. Okay. Dr. Cohen, unfortunately, I am out of time. And thank you. I yield back to Madam Chair.

Ms. HANDEL. Thank you, Representative.

This concludes today's hearing. I want to thank every one of our witnesses. This was very good information. I know you had so much more that you wanted to impart upon us, but I also know that it's in your written testimony as well.

So, without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

With that, this hearing is adjourned.

[Whereupon, at 10:48 a.m., the Subcommittee was adjourned.]

